

REMARKS

Claims 68 and 122-137 are pending in this application. Claims 125, 127 128 and 130 have been amended to correct an error in the structural formula given for *N*-(2-methoxy-4-chloro-5-(trifluoromethyl) phenyl)-*N'*-(3-(2-(*N*-methylcarbamoyl)-4-pyridyloxy) phenyl) urea .

In response to the rejection of claims 68 and 122-137 under 35 USC §102(a), and the rejection of claims 68 and 122-137 under 35 USC §102(e), submitted herewith are declarations (unexecuted) under 37 CFR §1.131 which set forth facts which show the disclosures made within the references relied on (listed below) were not made prior to the invention of the subject matter claimed herein and are not prior art. Therefore, the rejections under 35 USC §102(a) and (e) can not be maintained.

WO 00/41698 Riedl et al. publication date July 20, 2000,
WO 00/42012 Riedl et al. publication date of July 20, 2000,
US 10/071,248, Filed 02/11/2002; Priority claim to January 13, 1999;
US 10/086,417, Filed 03/04/2002; Priority claim to January 13, 1999;
US 09/773,659, Filed 02/02/2001; Priority claim to January 13, 1999;
US 09/773,675, Filed 02/02/2001; Priority claim to January 13, 1999;
US 09/773,672, FILED 02/02/2001; Priority claim to January 13, 1999;
US 09/773,658, Filed 02/02/2001; Priority claim to January 13, 1999;
US 09/773,604, Filed 02/02/2001; Priority claim to January 13, 1999;
US 09/907,970, Filed 07/19/2001; Priority claim to January 13, 1999;
US 09/948,915, Filed 09/10/2001; Priority claim to January 13, 1999; and
US 09/425,228, FILED 10/22/1999; Priority claim to January 13, 1999.

Executed copies of the declarations will be sent under a separate cover.

Claims 68 and 122-136 are provisionally rejected under the judicially created doctrine of obviousness-type double patenting based on the following claims within copending applications:

1) claims 66, 67, and 74-89 of copending application US 09/889,227, filed January 12, 2000, which claims priority to Serial No. 60/115,877 filed January 13, 1999;

2) claims 1, 3, 19, 21, 30 and 33 of copending application US 10/361,858, filed February 11, 2003, which claims the benefit of Provisional Application No. 60/354,937, filed February 11, 2002;

3) claims 1-54 of copending application US 10/895,985, filed July 22, 2004, which claims the benefit of Provisional Application No. 60/489,102, filed July 23, 2003;

4) claims 44, 45, ZC,ZD of copending application US 10/848,567, filed May 19, 2004, which claims the benefit of Provisional Application No. 60/471,735, filed May 20, 2003;

5) claims 16-21, 23-25 of copending application US 10/071,248, filed February 11, 2002, which is a continuation of 09/948,915, filed September 10, 2001, which is a continuation of Serial No. 09/425,228, filed October 22, 1999 which is a continuation-in-part of Serial No. 09/257,266 filed February 25, 1999, which claims priority to Serial Nos. 60/115,877 and 60/115,878 filed January 13, 1999.

Once the rejections under 35 USC§ 102(a) and (e) are withdrawn, the only outstanding rejection is this provisional rejection.

Applicants' last reply cited MPEP 804 (I)(B). It has since been learned that MPEP 804 (I) (B) was revised in August 2005 such that the portions of MPEP 804 (I)(B) quoted in the last reply are outdated.

MPEP 804 (I)(B), as revised, now provides additional guidance to Examiners on how to address obviousness-type double patenting issues where a "provisional" non-statutory obviousness-type double patenting rejection is the only rejection remaining in an application. Relevant portions of MPEP 804 (I)(B) now read as follows:

The "provisional" double patenting rejection should continue to be made by the examiner in each application as long as there are conflicting claims in more than one application unless that "provisional" double patenting rejection is the only rejection remaining in >at least<one of the applications.

>Nonstatutory Double Patenting Rejections

If a "provisional" nonstatutory obviousness-type double patenting (ODP) rejection is the only rejection remaining in the earlier filed of the two pending applications, while the other later-filed application is rejectable on other grounds, the examiner should withdraw that rejection and permit the

earlier-filed application to issue as a patent without a terminal disclaimer. If the ODP rejection is the only rejection remaining in the later filed application, while the earlier-filed application is rejectable on other grounds, a terminal disclaimer must be required in the later-filed application before the rejection can be withdrawn.

If “provisional” ODP rejections in two applications are the only rejections remaining in those applications, the examiner should then withdraw the ODP rejection in the earlier filed application thereby permitting that application to issue without the need of a terminal disclaimer. A terminal disclaimer must be required in the later-filed application before the ODP rejection can be withdrawn and the application permitted to issue. If both applications are filed on the same day, the examiner should determine which application claims the base invention and which application claims the improvement (added limitations). The ODP rejection in the base application can be withdrawn without a terminal disclaimer, while the ODP rejection in the improvement application cannot be withdrawn without a terminal disclaimer.

Where there are three applications containing claims that conflict such that an ODP rejection is made in each application based on the other two, it is not sufficient to file a terminal disclaimer in only one application addressing the other two applications. Rather, an appropriate terminal disclaimer must be filed in at least two of the applications to link all three together. This is because a terminal disclaimer filed to obviate a double patenting rejection is effective only with respect to the application in which the terminal disclaimer is filed; it is not effective to link the other two applications to each other.

Claims 61, 66, 67, and 74-89 of copending application US 09/889,227 have been canceled and claims 16-21 and 23-25 of copending application US 10/071,248 have been cancelled rendering the nonstatutory “provisional” obviousness-type double patenting rejection based on the claims in these applications moot.

The subject application was filed before copending applications US 10/361,858, US 10/895,985 and US 10/848,567, and is the “earlier filed application” under MPEP 804 (I)(B) with respect to each of these applications. Based on the procedures set forth in MPEP 804 (I)(B), the nonstatutory “provisional” obviousness-type double patenting rejections based on these applications should be withdrawn without filing a terminal disclaimer in the subject application.

In view of the above remarks, Applicants submit that the “provisional” double patenting rejection of claims 68 and 122-136 herein should be withdrawn and these claims should be allowed.

New Copending Applications

Other copending applications assigned to the same assignee as the present invention, which were not cited earlier, are listed below.

INTERNATIONAL APPLICATION NUMBER PCT/ US05/15016, FILED MAY 2 2005;

This application contains claims directed to new urea compounds and their salts.

US APPLICATION NUMBER 10/571,100, FILED 03/08/2006;

This application was revived on May 11, 2006. It contains claims to assays and methods of treatment with particular ureas.

US APPLICATION NUMBER 11/212,109, FILED 06/26/2005;

This application contains claims to methods of preparing solid dispersions with a urea compound.

US APPLICATION NUMBER 11/212,907, FILED 06/29/2005;

This application contains claims to methods of preparing solid dispersions with a urea compound.

US APPLICATION NUMBER 11/212,907, FILED 06/29/2005;

This application is a division of an application cited earlier, SN 09/755,60, filed 01/08/2001, directed to certain heterocyclic ureas.

Status of Copending Applications Cited Earlier

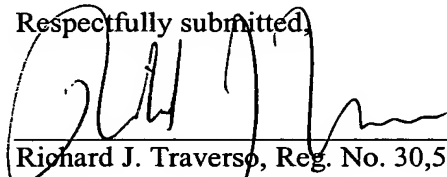
The following applications cited earlier are still pending.

Serial No. 09/640,780 filed August 18, 2000
Serial No. 09/472,232 filed December 27, 1999
Serial No. 09/776,936 filed December 22, 1998
Serial No. 09/776,935 filed December 22, 1998
Serial No. 09/993,647 filed November 27, 2001

Serial No. 10/086,417 filed March 4, 2002
Serial No. 10/071,248 filed February 11, 2002
Serial No. 10/308,187 filed December 3, 2002
Serial No. 10/361,859 filed February 11, 2003
Serial No. 10/361,850 filed February 11, 2003
Serial No. 10/060,396 filed February 1, 2002
Serial No. 09/458,014 filed December 10, 1999
Serial No. 10/125,369 filed April 19, 2002
Serial No. 09/889,227 filed July 12, 2001
Serial No. 09/948,915 filed September 10, 2001
Serial No. 10/042,226 filed January 11, 2002
Serial No. 10/361,858 filed February 11, 2003
Serial No. 10/789,446 filed March 1, 2004
Serial No. 10/788,029 filed February 27, 2004
Serial No. 10/788,405 filed March 1, 2004
Serial No. 10/788,426 filed March 1, 2004
Serial No. 10/895,985 filed July 22, 2004
Serial No. 10/848,567 filed May 19, 2004
Serial No. 09/777,920 filed February 7, 2001
Serial No. 09/838,286 filed April 20, 2001

If there are any remaining issues, which can be expedited by a telephone conference, the Examiner is courteously invited to telephone counsel at the number indicated below.

Respectfully submitted,



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